

Legislative Council—No 33

As introduced and read a first time, 24 September 2014

South Australia

Mining (Protection of Exempt Land From Mining Operations) Amendment Bill 2014

A BILL FOR

An Act to amend the *Mining Act 1971*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Mining (Protection of Exempt Land From Mining Operations) Amendment Act 2014*.

5 2—Commencement

This Act will come into operation 3 months after the day on which it is assented to by the Governor.

3—Amendment provisions

10 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Mining Act 1971*

4—Amendment of section 6—Interpretation

Section 6, definition of *exempt land*—delete "section 9" and substitute:
section 15C

15 5—Repeal of sections 9 and 9AA

Sections 9 and 9AA—delete the sections

6—Insertion of Part 2A

After Part 2 insert:

Part 2A—Exempt land

15B—Interpretation

(1) In this Part—

business day means a day other than a Saturday or a Sunday or other public holiday;

cooling-off period, in relation to an agreement with a mining operator to waive the benefit of an exemption, means the period commencing when the agreement is made and concluding at the end of the fifth clear business day after the day on which the agreement is made;

mining operations include any operations or activity for which a miscellaneous purposes licence may be granted.

(2) For the purposes of this Part, land is adjacent to other land if the land—

(a) abuts the other land; or

(b) is no more than 60 metres from the other land and is directly separated from the other land only by—

(i) a road, street, path, railway or thoroughfare; or

(ii) a watercourse; or

(iii) a reserve or other similar open space.

15C—Exempt land

(1) Subject to this section—

(a) land that is lawfully and genuinely used—

(i) as a yard, garden, cultivated field, plantation, orchard or vineyard;

(ii) as an airfield, railway or tramway;

(iii) as the grounds of a church, chapel, school, hospital or institution; or

(b) land that constitutes any parklands or recreation grounds under the control of a council; or

(c) land—

(i) that is dedicated or reserved, pursuant to statute, for the purpose of waterworks; or

(ii) that is vested in a Minister for the purpose of waterworks; or

(iii) that is comprised within an easement in favour of a Minister for infrastructure purposes; or

(d) land that constitutes a forest reserve under the *Forestry Act 1950*; or

5 (e) any separate parcel of land of less than 2 000 square metres within any city, town or township; or

(f) land that is situated—

10 (i) within 400 metres of a building or structure used as a place of residence (except a building or structure of a class excluded by regulation from the ambit of this paragraph); or

(ii) within 150 metres of—

15 (A) a building or structure, with a value of \$200 or more, used for an industrial or commercial purpose; or

(B) a spring, well, reservoir or dam,

(but not if it is an improvement made for the purposes of mining operations),

20 is exempt from mining operations under this Act and, unless the benefit of the exemption is waived under this Part, no claim, lease or licence may authorise prospecting, exploring or mining on such land (but this section does not prevent the pegging out of a claim on such land).

25 (2) If any land is subject to a claim, lease or licence under this Act and that land would, but for this subsection, be land exempt from mining operations under this Act by reason only of a fact or circumstance occurring or arising subsequent to the pegging out, or granting, of the claim, lease or licence, that land is not exempt from operations under this Act.

30 (3) The following persons will, for the purposes of this Act, be regarded as having the benefit of an exemption under this section (and, subject to an order of the ERD Court under this Part, each person who has the benefit of an exemption must be a party to an agreement to waive the benefit before the land can cease to be exempt land):

35 (a) the owner of the exempt land;

(b) in the case of land that is exempt from mining operations under subsection (1)(f) by reason of its proximity to other land on which a building, structure, spring, well, reservoir or dam is situated—the owner of that other land.

40 (4) This section does not affect any provision of the *Pastoral Land Management and Conservation Act 1989* prohibiting or restricting the conduct of mining operations on lands subject to that Act.

15D—Waiver of exemption

- 5
- (1) A mining operator may, by written notice given personally or by post to a person who has the benefit of an exemption under section 15C, request the person to enter into an agreement with the operator to waive the benefit of the exemption.
- (2) A notice under subsection (1) must—
- (a) be in a form determined or approved by the Minister; and
 - (b) be accompanied by any information prescribed by the regulations for the purposes of this subsection.
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- (3) An agreement to waive the benefit of an exemption—
- (a) must be in writing; and
 - (b) takes effect on the expiry of the cooling-off period (unless earlier rescinded) and subject to the operation of section 15F.
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- (4) A mining operator is liable to indemnify a person to whom the operator gives a notice under this section for the reasonable costs of obtaining legal assistance relating to the operation of this Part up to \$500 or, if some other amount is prescribed by regulation, that amount.

15E—Cooling-off

- 20
- (1) A person who has entered into an agreement with a mining operator to waive the benefit of an exemption may, by giving the operator written notice before the expiration of the cooling-off period of the person's intention not to be bound by the agreement, rescind the agreement.
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- (2) A notice rescinding an agreement may be given—
- (a) by giving it to the mining operator personally; or
 - (b) by posting it by registered post to the operator's ordinary place of business (in which case the notice is taken to have been given when the notice is posted); or
 - (c) by leaving it for the operator at the operator's ordinary place of business with someone apparently over the age of 16 years; or
 - (d) by transmitting it by fax or email to a fax number or email address provided by the operator (in which case the notice is taken to have been given at the time of transmission).
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- (3) If in legal proceedings the question arises whether a notice rescinding an agreement has been given in accordance with this section, the onus of proving the giving of the notice lies on the person rescinding the agreement.
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15F—Notice of objection by interested parties and others

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- (1) A person may, in accordance with this section, lodge with the ERD Court a notice of objection to a proposed agreement between a mining operator and the person who has the benefit of an exemption under section 15C to waive the benefit of the exemption.
- (2) If a mining operator has requested a person who has the benefit of an exemption under section 15C to enter into an agreement with the operator to waive the benefit of the exemption, the operator must, before entering into the agreement—
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- (a) by written notice given personally or by post to each person who is an interested party in relation to the exemption—
- (i) notify the person of the proposed agreement; and
- (ii) advise the person of his or her right to lodge a notice of objection to the agreement; and
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- (b) publish notice of the proposed agreement in a newspaper circulating generally throughout the area of the State in which the relevant land is situated and include in the notice advice as to the right of any person to lodge a notice of objection to the agreement; and
- 20
- (c) by written notice given to the Department, notify the Department of the proposed agreement.
- (3) If a mining operator has notified the Department of a proposed agreement under subsection (2), the Department must publish notice of the agreement on a website maintained by the Department to which the public has access free of charge and include in the notice the date of publication of the notice and advice as to the right of any person to lodge a notice of objection to the agreement.
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- (4) A notice under subsection (2) or (3) must be in a form determined or approved by the Minister.
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- (5) A notice of objection must—
- (a) set out the grounds of the objection; and
- (b) include any other information required under the regulations; and
- (c) be in the prescribed form; and
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- (d) be lodged with the ERD Court not more than 2 weeks after—
- (i) if the notice is lodged by an interested party—the day on which the party is given notice of the proposed agreement in accordance with subsection (2)(a); and
- 40

(ii) in any other case—the day on which notice of the proposed agreement is published in a newspaper in accordance with subsection (2)(b) or the day on which the Department publishes notice of the proposed agreement on a website in accordance with subsection (3), whichever occurs later.

5 (6) A person who has lodged a notice of objection may withdraw the notice by lodging a withdrawal notice in the prescribed form with the ERD Court.

10 (7) A person who has lodged a notice of objection or a withdrawal notice must ensure that a copy of the notice is given to the mining operator as soon as reasonably practicable after the notice is lodged.

15 (8) For the purposes of this section, a person is an *interested party* in relation to an exemption under section 15C if the person is the owner or occupier of a piece of land that is adjacent to the land to which the exemption applies.

15G—Effect of notice of objection

20 If a person lodges a notice of objection to an agreement (or proposed agreement) for the waiver of an exemption with the ERD Court in accordance with section 15F, any agreement for the waiver of the exemption entered into between the mining operator and the person who has the benefit of the exemption is of no effect (or ceases to have effect) unless—

- 25 (a) the notice is withdrawn or has been struck out; or
(b) the ERD Court confirms the agreement (with or without variation) under section 15H.

15H—Application to ERD Court

(1) If—

- 30 (a) a mining operator has been unable to reach an agreement to waive the benefit of an exemption with a person to whom the operator has given a notice under section 15D; or
(b) 1 or more notices of objection to an agreement (or proposed agreement) between a mining operator and a person who has the benefit of an exemption have been lodged with the
35 ERD Court in accordance with this Part,

the mining operator may (as the case requires) apply to the ERD Court for an order—

- (c) waiving the benefit of the exemption for the person; or
(d) confirming the agreement.

40 (2) Subject to subsection (4), the person who has the benefit of the exemption and, if relevant, any person who has filed a notice of objection in relation to the proposed agreement are respondents to the application.

- (3) The ERD Court may refuse to determine an application under subsection (1)(a) unless the mining operator satisfies the Court that—
- (a) the mining operator complied with section 15D(2); and
 - (b) the mining operator made a reasonable attempt to reach agreement with each person entitled to the benefit of the exemption.
- (4) A respondent who is not the person with the benefit of an exemption and is not an interested party in relation to an exemption for the purposes of section 15F has standing to take part in any proceedings under subsection (1)(b) only if he or she satisfies the ERD Court that he or she is likely to be adversely affected by the proposed mining operations if those operations proceed (and if a respondent fails to obtain standing and no other respondent is objecting to the relevant agreement then the ERD Court may strike out the notice of objection).
- (5) On an application, the ERD Court may—
- (a) if the mining operator satisfies the Court that—
 - (i) any adverse effects of the proposed mining operations on the respondents can be appropriately addressed by the imposition of conditions on the mining operator (including the payment of compensation to the respondents); and
 - (ii) it is otherwise appropriate for the benefit of the exemption to be waived (having regard to the matters specified in subsection (6)),
according to the circumstances of the case—
 - (iii) make an order waiving the benefit of the exemption and imposing conditions on the mining operator; or
 - (iv) make an order confirming the agreement (with or without variation); or
 - (b) if the Court is not so satisfied—refuse the application.
- (6) For the purposes of subsection (5)(a)(ii), the Court must have regard to the following:
- (a) the expected duration of the proposed mining operations;
 - (b) the likely effect of the proposed mining operations on uses of land (including future uses) adjacent to, and in the vicinity of, the land on which the mining operations are to occur;
 - (c) the possible social, environmental and economic impact of the proposed mining operations;

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- (d) the extent to which rehabilitation of the land is likely to be required on account of the impact of the proposed mining operations;
- (e) the type of minerals sought to be recovered and the relative abundance or rarity of those minerals in other parts of the State.
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- (7) A condition imposed by the ERD Court under subsection (5)(a), or any variation to an agreement made by the ERD Court under subsection (5)(a) (as the case requires), may address adverse effects of the proposed mining operations on the person who has the benefit of the exemption or on another respondent.
- (8) The ERD Court may not make an order for costs against a respondent unless the Court considers that it is appropriate to do so on the ground that the respondent—
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- (a) has obstructed or unnecessarily delayed the proceedings; or
- (b) has failed to attend any proceedings or failed to comply with a rule, order or direction of the Court; or
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- (c) in the case of a respondent who is not the person with the benefit of the exemption or an interested party in relation to the exemption for the purposes of section 15F—did not have reasonable grounds for lodging the notice of objection.

15I—Related provisions

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- (1) If an agreement or order takes effect under this Part in respect of exempt land, the land ceases to be exempt land, but the exemption revives on completion of the mining operations in respect of which the agreement or order was made or at such earlier time as may be stipulated in that agreement or order.
- (2) An agreement or order under this Part is binding on—
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- (a) successors in title to those owners of land who had the benefit of the former exemption; and
- (b) the holders from time to time of any mining tenement under which mining operations (being mining operations in respect of which the agreement or order was made) are carried out.
- 35
- (3) Subsections (1) and (2) apply to an agreement to waive an exemption under section 9 or 9AA entered into before the commencement of this Part as if it were an agreement to waive the benefit of an exemption under this Part.